



[4830-1-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-143040-14]

RIN 1545-BM59

Reporting of Original Issue Discount on Tax-Exempt Obligations; Basis and Transfer Reporting by Securities Brokers for Debt Instruments and Options

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to information reporting by brokers for transactions involving debt instruments and options, including the reporting of original issue discount (OID) and acquisition premium on tax-exempt obligations, the treatment of certain holder elections for reporting a taxpayer's adjusted basis in a debt instrument, and transfer reporting for section 1256 options and debt instruments. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by **[INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-143040-14), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-143040-14), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, or sent electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-143040-14).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Pamela Lew, (202) 317-7053; concerning submissions of comments, Regina Johnson, (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

**Paperwork Reduction Act**

Section 1.6049-10T, which is published elsewhere in this issue of the **Federal Register**, requires a payor to report OID and acquisition premium on tax-exempt obligations acquired on or after January 1, 2017. This information is required to enable the IRS to verify that a taxpayer is reporting the correct amount of tax-exempt interest each year for alternative minimum tax and other purposes. In addition, because this information is used to report a taxpayer's adjusted basis in a debt instrument under section 6045(g), this information is required to enable the IRS to verify that a taxpayer is reporting the correct amount of gain or loss upon the sale of a tax-exempt obligation. The burden for the collection of information contained in §1.6049-10T and the corresponding proposed regulations in this document will be reflected in the burden on Form

1099-OID (OMB control number 1545-0117) when revised to request the additional information in the regulations.

Upon the transfer of a covered security, section 6045A and §1.6045A-1 require the transferring broker to provide to the transferee broker a transfer statement containing certain information relating to the security. This transfer statement generally provides the transferee broker the information needed to determine a customer's adjusted basis and whether any gain or loss with respect to the security is long-term, short-term, or ordinary as required by section 6045(g). Prior to the publication of §1.6045A-1T in this issue of the **Federal Register**, a broker did not have to provide a transfer statement for a section 1256 option. In addition, a broker did not have to provide the last date on or before the transfer date that the broker made an adjustment for a particular item relating to a debt instrument. Section 1.6045A-1T, however, now requires a broker to transfer this information for a section 1256 option transferred on or after January 1, 2016, and for a debt instrument transferred on or after June 30, 2015.

The collection of information contained in section 1.6045A-1 relating to the furnishing of information in connection with the transfer of securities has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2186. The collection of information in §1.6045A-1T and the corresponding proposed regulations in this document is necessary to allow brokers that effect sales of transferred section 1256 options and debt instruments that are covered securities to determine and report the adjusted basis of these

securities in compliance with section 6045(g). This collection of information is required to comply with the provisions of section 403 of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110-343 (122 Stat. 3765, 3854 (2008)) (the Act). The collection of information contained in §1.6045A-1T is an increase in the total annual burden under control number 1545-2186. The likely respondents are brokers transferring section 1256 options and debt instruments that are covered securities.

Estimated total annual reporting burden is 3,333 hours.

Estimated average annual burden per respondent is 2 hours.

Estimated average burden per response is 4 minutes.

Estimated number of respondents is 7,500.

Estimated total frequency of responses is 200,000.

The collection of information is required to comply with the provisions of section 403 of the Act.

The holder of a debt instrument is permitted to make a number of elections that affect how basis is computed. To minimize the need for reconciliation between information reported by a broker to both a customer and the IRS and the amounts reported on the customer's tax return, a broker is required to take into account certain specified elections in reporting information to the customer. A customer, therefore, must provide certain information concerning an election to the broker in a written notification. A written notification includes a writing in electronic format. See §1.6045-1(n)(5).

The collection of information contained in §1.6045-1(n)(5) relating to the furnishing of information by a customer to a broker in connection with the sale or transfer of a debt instrument that is a covered security has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2186. Under §1.6045-1T(n)(11)(i)(A), which is published elsewhere in this issue of the **Federal Register**, unlike the rule in current §1.6045-1(n)(5) adopted in 2013, a broker must not take into account the election under §1.1272-3 in reporting a customer's adjusted basis in a debt instrument. Therefore, a customer is no longer required to notify the broker that the customer has made or revoked an election under §1.1272-3. This change represents a decrease in the total annual burden under OMB control number 1545-2186. In addition, under §1.6045-1T(n)(11)(i)(B), a broker must take into account the election under section 1276(b)(2) unless the customer timely notifies the broker that the customer has not make the election. The temporary regulations reverse the assumption in current §1.6045-1(n)(5) adopted in 2013. Because the section 1276(b)(2) election results in a more taxpayer-favorable result than the default ratable method for accruing market discount in most cases, it is anticipated that more customers will want to use this method and these customers will no longer need to notify their brokers that they have made the election. As a result, this change represents a decrease in the total annual burden under OMB control number 1545-2186.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103.

### **Background and Explanation of Provisions**

Section 6045 generally requires a broker to report gross proceeds upon the sale of a security. Section 6045 was amended by section 403 of the Act to require the reporting of adjusted basis for a covered security and whether any gain or loss upon the sale of the security is long-term or short-term. In addition, the Act added section 6045A, which requires certain information to be reported in connection with a transfer of a covered security to another broker. Section 6049 requires the reporting of interest payments (including accruals of OID treated as payments).

On April 18, 2013, the Treasury Department and the IRS published in the **Federal Register** (TD 9616 at 78 FR 23116) final regulations under sections 6045 and 6045A (the 2013 final basis reporting regulations). After the publication of the 2013 final basis reporting regulations in the **Federal Register**, the Treasury Department and the IRS received written comments on certain provisions of the 2013 final basis reporting regulations. In response to these written comments, temporary regulations in the Rules and Regulations section of

this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to sections 6045, 6045A, and 6049. The temporary regulations (1) amend §1.6045-1(n) of the 2013 final basis reporting regulations to change a broker's treatment of the election to treat all interest as OID under §1.1272-3 and the election to accrue market discount based on a constant yield under section 1276(b)(2), (2) amend §1.6045A-1 of the 2013 final basis reporting regulations to require transfer statement reporting under section 6045A for section 1256 options, (3) amend §1.6045A-1 of the 2013 final basis reporting regulations to require an additional item of information to be provided on transfer statements for debt instruments, and (4) require information reporting under section 6049 for OID and acquisition premium on tax-exempt obligations. The text of the temporary regulations also serves as the text of these proposed regulations.

### **Consideration of Administrative Burdens Related to Basis Reporting**

A number of commenters have indicated that compliance with basis reporting requirements and the use of basis and other information reported by brokers will require considerable resources and effort on the part of return preparers and information recipients. The Treasury Department and the IRS are continuing to review all aspects of the information reporting process and are exploring ways to reduce the compliance burden for both brokers and for information recipients.

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as

supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Any effect on small entities by the rules in the regulations generally flows directly from section 403 of the Act. In addition, it is anticipated that the requirements in the regulations in this document will fall only on financial services firms with annual receipts greater than the \$38.5 million threshold and, therefore, on no small entities.

Section 403(a) of the Act requires a broker to report the adjusted basis of a debt instrument that is a covered security. Although a holder of a debt instrument (customer) is permitted to make a number of elections that affect how basis is computed, a broker only is required to take into account specified elections in reporting a debt instrument's adjusted basis, including the election under section 1276(b)(2) to determine accruals of market discount on a constant yield method. Under the 2013 final basis reporting regulations, a customer had to notify the broker that the customer had made the section 1276(b)(2) election. However, §1.6045-1T(n)(11)(i)(B) requires a broker to take into account the election under section 1276(b)(2) in reporting a debt instrument's adjusted basis unless the customer timely notifies the broker that the customer has not made



the election. The notification must be in writing, which includes a writing in electronic format. In most cases, this election results in a more taxpayer-favorable result than the default ratable method. It is anticipated that this collection of information in the regulations will not fall on a substantial number of small entities, especially because fewer customers will need to notify brokers about the election. Further, the regulations generally implement the statutory requirements for reporting adjusted basis under section 403 of the Act. Moreover, any economic impact is expected to be minimal because it should take a customer no more than seven minutes to satisfy the information-sharing requirement in these regulations.

Section 403(c) of the Act added section 6045A, which requires applicable persons to provide a transfer statement in connection with the transfer of custody of a covered security. Section 1.6045A-1T and the corresponding proposed regulations in this document effectuate the Act by giving the broker who receives the transfer statement the information necessary to determine and report adjusted basis and whether any gain or loss with respect to a debt instrument or section 1256 option is long-term or short-term as required by section 6045 when the security is subsequently sold. Consequently, §1.6045A-1T and the corresponding proposed regulations in this document do not add to the impact on small entities imposed by the statutory provisions. Instead, the regulations limit the information to be reported to only those items necessary to effectuate the statutory scheme.

The information required under §1.6049-10T and the corresponding proposed regulations in this document will enable the IRS to verify that a taxpayer is reporting the correct amount of tax-exempt interest each year for alternative minimum tax and other purposes. In addition, because this information is used to report a taxpayer's adjusted basis in a debt instrument under section 6045(g), this information is required to enable the IRS to verify that a taxpayer is reporting the correct amount of gain or loss upon the sale of a tax-exempt obligation. Any economic impact on small entities is expected to be minimal because a broker already is required to determine the accruals of OID and acquisition premium for purposes of determining and reporting a customer's adjusted basis on Form 1099-B under section 6045. Moreover, any effect on small entities by the rules in the final regulations flows from section 6049 and section 403 of the Act.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

### **Comments and Request for Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS as prescribed in the preamble under the "Addresses" heading. The Treasury Department and the IRS welcome comments on the clarity of the proposed rules and how they can be

made easier to understand. All comments will be available at [www.regulations.gov](http://www.regulations.gov) for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for a public hearing will be published in the **Federal Register**.

### **Drafting Information**

The principal author of these regulations is Pamela Lew, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in their development.

### **List of Subjects in 26 CFR Part 1**

Income Taxes, Reporting and recordkeeping requirements.

### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

### **PART 1--INCOME TAXES**

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 1.6045-1(n)(11) also issued under 26 U.S.C. 6045(g). \* \* \*

Section 1.6045A-1(e) and (f) also issued under 26 U.S.C. 6045A(a). \* \* \*

Section 1.6049-10 also issued under 26 U.S.C. 6049(a). \* \* \*

Par. 2. Section 1.6045-1(n)(11) is added to read as follows:

§1.6045-1 Returns of information of brokers and barter exchanges.

[The text of proposed §1.6045-1(n)(11) is the same as the text of §1.6045-1T(n)(11) published elsewhere in this issue of the **Federal Register**].

Par. 3. Sections 1.6045A-1(e) and (f) are added to read as follows:

§1.6045A-1 Statements of information required in connection with transfers of securities.

[The text of proposed §1.6045A-1(e) and (f) is the same as the text of §1.6045A-1T(e) and (f) published elsewhere in this issue of the **Federal Register**].

Par. 4. Section 1.6049-10 is added to read as follows:

§1.6049-10 Reporting of original issue discount on a tax-exempt obligation.

[The text of proposed §1.6049-10 is the same as the text of §1.6049-10T published elsewhere in this issue of the **Federal Register**].

John Dalrymple

Deputy Commissioner for Services and Enforcement.

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